



# CZEPIGADALYDILLMAN LLC

ESTATE PLANNING, PROBATE & ELDER LAW

*Planning Today for Your Tomorrow*

PAUL T. CZEPIGA, JD, MBA, CPA, CELA<sup>\*</sup>  
paul@ctseniorlaw.com

BRENDAN F. DALY, JD, CELA<sup>\*</sup>  
brendan@ctseniorlaw.com

Of Counsel  
NOREEN A. DILLMAN, JD, CPA  
noreen@ctseniorlaw.com

D.J. HARRY WEBB, JD, ULM  
harrywebblaw@snet.net

LINDA WORDEN, BSN, MPH, CCM  
Geriatric Services Coordinator  
linda@ctseniorlaw.com

www.ctseniorlaw.com

March 11, 2010

Senator Paul Doyle,  
Representative Toni Walker  
and the members of the Human Services Committee

Re: SB 370, An Act Concerning Medicaid Long-Term Care Coverage for Married  
Couples

## **PROPOSED LEGISLATION TO ALLOW A COMMUNITY SPOUSE TO KEEP THE MAXIMUM AMOUNT OF FAMILY ASSETS**

### **I. Background**

In Connecticut, when a married couple applies for nursing home benefits, the general rule is that the Community Spouse gets to keep the home residence plus the lesser of 50% of the couple's remaining assets, or \$109,560. This amount the community spouse can keep is called the "Community Spouse Protected Amount" ("CSPA"). The couple's remaining assets are deemed by the State to belong to the institutionalized spouse and must be spent down prior to the institutionalized spouse being eligible for nursing home benefits.

### **II. Purpose of Proposed Legislation**

It is our position that the Community Spouse in all cases should minimally be allowed to keep the full CSPA of \$109,560.

### **III. Example of How Proposed Legislation Would Work**

Let me give you two simple examples. We will assume in both examples that the husband is the institutionalized, or ill, spouse and the wife is the community, or well, spouse.

In Example #1, assume that a couple's assets on the date of institutionalization is \$50,000.00. Under current law, in this example, 50% of the assets is \$25,000.00. Because this is lesser than \$109,560.00, \$25,000 is all the wife is allowed to keep. The remaining

Reply to

☒ 48 Christian Lane Newington, CT 06111 P (860) 594-7995 F (860) 594-7998 ☐ 1160 Silas Deane Highway Wethersfield, CT 06109 P (860) 563-4070 F (860) 614-2446

<sup>\*</sup> Certified as an Elder Law Attorney by the National Elder Law Foundation as approved by the American Bar Association. Certification of this specialty is not recognized the Rules Committee of the Connecticut Superior Court.

\$25,000.00 is deemed by the State to belong to the husband and has to be spent down in some fashion before he can become eligible for Medicaid. The State is hoping that the wife will spend down the \$25,000 on her husband's care at the nursing home. But, although the \$25,000 is deemed to belong to the husband, his wife is allowed to spend the husband's deemed \$25,000 on her own needs. In reality, what happens in all cases of this type is that the wife will spend the \$25,000 on items that are necessary for her own well being, including home repairs or purchasing prepaid burial arrangements. This is, essentially, the proverbial rainy day and the wife will spend the funds on positioning herself to be as financially secure as possible for her future, given the scarce resources available. Under the proposed legislation, the wife should be allowed to keep the full \$50,000.00.

In example #2, if the couple's assets on the date of institutionalization were \$125,000, then, under current law, the CSPA would be \$62,500 and the "spend down" amount would be \$62,500 increasing from \$25,000 in example #1. Under the proposed legislation, the Community Spouse in example #2 would be able to keep the full \$109,560.00 out of the total assets of \$125,000.00 and only \$15,440.00 would have to be spent down (the difference between \$125,000.00 of total assets and \$109,560.00). Whether the "spend down" amount is \$25,000 or \$62,500, none of it will, in reality, be spent at the nursing home so why force the community spouse, who has meager savings to begin with, to spend down unnecessarily?

#### **IV. Proposed Legislation is Budget Neutral**

The proposed legislation would minimally be budget neutral to the State of Connecticut because no delay or deferral of payment to the nursing home by the State of Connecticut is achieved by forcing the community spouse to spend down paltry family resources. The spend down amount is not going to the nursing home—the community spouse will spend it on their own needs. Regardless of whether the well spouse is allowed to keep \$25,000, \$62,500, or \$109,560, the State will still begin to pay for the ill spouse's nursing home care at the same time because spend down is easily achieved by the purchase of modest items to benefit the community spouse and not by payment of the spend down amount to the nursing home.

#### **V. Proposed Legislation Will Save State Funds**

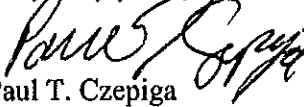
Not only is the proposed legislation budget neutral, but the State will save money: There are many instances under existing law where a Community Spouse is entitled by law to keep more than the CSPA amount derived from the 50% formula. However, the Department of Social Services intake worker has no authority to allow the Community Spouse to retain the additional assets; the Community Spouse must request a Fair Hearing and must demonstrate why he/she is entitled to receive the additional assets. A Fair Hearing absorbs the time of the intake worker and Hearing Officer. A streamlined

Senator Paul Doyle  
Representative Toni Walker  
March 11, 2010  
Page 3

process whereby the Community Spouse is allowed to keep the maximum CSPA of \$109,560 will result in fewer administrative Fair Hearings being requested and will result in the faster processing of Medicaid applications where a spend down would otherwise be required. This will result in a savings to the State of all the costs associated with Fair Hearings and may allow intake workers to be reassigned to other duties within DSS rather than the State having to hire additional staff.

Thank you all for you time and attention to this pressing need of our senior citizens.

Very truly yours,

  
Paul T. Czepiga